

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

SAINT TORRANCE,

Case No. 1:08-cv-74

Plaintiff,

Dlott, J.

Black, M.J.

vs.

DECISION ONE MORTGAGE
COMPANY, LLC, *et al.*,

Defendants.

**REPORT AND RECOMMENDATION¹ THAT PLAINTIFF'S MOTION FOR
DEFAULT JUDGMENT (Doc. 14) BE DENIED**

This civil action is before the Court on plaintiff's motion for entry of default judgment (doc. 14) as to defendants Saxon Mortgage Company Services, Inc. ("Saxon") and Franklin Credit Management Corporation ("Franklin"), and the parties' responsive memoranda (docs. 16, 19, 20). Plaintiff asserts that defendants have not timely responded to the complaint and, therefore, that default judgment is warranted.

The procedure governing the entry of default is provided by Fed. R. Civ. P. 55(a), which states in pertinent part:

When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter the party's default.

Here, however, defendants have not failed to plead or otherwise defend as provided by the Federal Rules of Civil Procedure. In response to plaintiff's motion, both defendants sought leave of Court to file responsive pleadings. (Docs. 17, 21.) Defendants maintained that they were not involved in the origination of the loans at issue, and therefore failed to recognize their participation in this matter other than being named nominally as parties. Accordingly, defendants' motions for leave were granted, and they

¹ Attached hereto is a NOTICE to the parties regarding objections to this Report and Recommendation.

subsequently filed motions to dismiss plaintiff's complaint. (*See* Docs. 25, 27.)

Here, defendants have not failed to plead or otherwise defend as provided by the Federal Rules of Civil Procedure. Thus, pursuant to Fed. R. Civ. P. 55(a), entry of default judgment is improper. Accordingly, it is therefore **RECOMMENDED** that plaintiff's motion for default judgment (doc. 14) be **DENIED as MOOT**.

DATE:November 3, 2008

s/Timothy S. Black
Timothy S. Black
United States Magistrate Judge

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NOTICE

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to this Report & Recommendation (“R&R”) within **TEN (10) DAYS** of the filing date of this R&R. That period may be extended further by the Court on timely motion by either side for an extension of time. All objections shall specify the portion(s) of the R&R objected to, and shall be accompanied by a memorandum of law in support of the objections. A party shall respond to an opponent’s objections within **TEN (10) DAYS** after being served with a copy of those objections. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).